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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 629

MRS. DAVID A. BUCKLEY, *Petitioner*,

v.

J. YANCEY CHRISTMAS, *Respondent*.

MOTION AND PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT, AND SUPPORTING BRIEF.

HARVEY L. RABBITT,
Attorney for Petitioner.

SUSAN BRANDEIS,
JACOB H. GILBERT,
Of Counsel.

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Point I. Petitioner's "first" counterclaim placed in issue all matters pertaining to the ownership of the mare, "Cleaning Time," and a complete adjudication of the issues raised by the pleadings and at the trial required the rendition of a conclusive judgment disposing of such issues, including the property rights of the parties in the said mare. Accordingly, the Circuit Court of Appeals erred in failing to remand the cause to the District Court for the entry of a judgment in accordance with such issues and proper findings in support thereof	13

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Point II. The error respecting the written agreement (exhibit 5) cannot be cured by the ruling of the Circuit Court of Appeals that said written agreement is inadmissible, and that the judgment dismissing petitioner's "third" counterclaim can be sustained under rule 52(a) by the finding of an independent verbal agreement, since the error basically involves a failure to consider petitioner's evidence as to her version of said verbal agreement and a denial of due process 18

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OCTOBER TERM, 1941.

No. .....

MRS. DAVID A. BUCKLEY, *Petitioner*,

v.

J. YANCEY CHRISTMAS, *Respondent*.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI BEFORE PRINTING RECORD.

Comes now the petitioner by her attorney, Harvey L. Rabbitt, and moves this Honorable Court for leave to file the attached petition for writ of certiorari, to the Circuit Court of Appeals for the Fourth Circuit, prior to the printing of the record on certiorari and for cause of such motion respectfully shows:

The record in the court below consisted of the pleadings, proceedings and opinion in the District Court, and a complete transcript of all the testimony adduced and exhibits, all of which record, together with the proceedings and opinion of the Circuit Court of Appeals, has been certified to this Court by the court below.

The court below stayed the mandate to the District Court until September 22nd, pending the filing of the petition for writ of certiorari in this Court.

The petition for certiorari assigns errors in the decision of the court below which raises only questions of law, and your petitioner believes that it will not be necessary to print the whole record on the petition for certiorari in this Court, and has endeavored to stipulate with counsel for the respondent as to the parts of the record to be printed, which it is believed are sufficient for a consideration of the errors assigned in the petition, said parts of the record being as follows:

1. Bill of complaint filed in District Court.
2. Defendant's answer and counterclaim.
3. Plaintiff's replication and answer to counterclaim.
4. Plaintiff's exhibit number 5.
5. Opinion and findings of the District Court.
6. Judgment of the District Court.
7. Petition for appeal to Circuit Court of Appeals.
8. Assignment of errors.
9. Order allowing appeal.
10. Opinion of the Circuit Court of Appeals.
11. Order denying petition for rehearing.
12. Order of July 26, 1941 staying mandate.

A copy of the proposed petition for certiorari and stipulation as to the parts of the record to be printed have been tendered counsel for the respondents, and they have refused to stipulate as to the record to be printed before a copy of the petition for certiorari has been officially served upon them.

WHEREFORE, it is respectfully prayed that an order be issued by this Court authorizing the filing of the attached petition for certiorari pending a stipulation between counsel or settlement of the question of the record to be printed.

Respectfully submitted,

HARVEY L. RABBITT,
Attorney for Petitioner.

SUSAN BRANDEIS,
JACOB H. GILBERT,
Of Counsel.